

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CHRISTINA RULE	)	
	)	CASE NO.
VS.	)	2017-00403
	)	
DUKE ENERGY KENTUCKY, INC.	)	

ORDER

This matter comes before the Commission on Duke Energy Kentucky, Inc.'s ("Duke Kentucky") motion to dismiss ("Motion")<sup>1</sup> with prejudice the Complaint filed by Christina Rule ("Ms. Rule"). Upon review of the record and being otherwise sufficiently advised, the Commission grants Duke Kentucky's Motion and dismisses Ms. Rule's Complaint with prejudice.

On September 27, 2018, Ms. Rule filed a complaint alleging that Duke Kentucky overcharged her for utility services. By Order entered on November 2, 2017, the Commission found that Ms. Rule established a *prima facie* case regarding alleged overcharges for gas service between March 21, 2017, and May 19, 2017, but that the Commission was unable to determine whether Ms. Rule established a *prima facie* case for the remaining allegations. Ms. Rule was directed to file specific information within 20 days of the November 2, 2017 Order, but she failed to do so. The Commission's Order entered on January 9, 2018, dismissed all allegations raised in the Complaint, with the exception of the alleged overcharges for gas service between March 21, 2017, and May

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<sup>1</sup> Duke Kentucky's Answer and Motion to Dismiss filed February 19, 2018.

19, 2017. During the January 25, 2018 informal conference, Ms. Rule was afforded an additional opportunity to file the specified information, but she again failed to do so.

By Order entered on February 19, 2018, the Commission directed Duke Kentucky to satisfy or file a written answer on or before February 22, 2018, to the allegation that Ms. Rule was overcharged for gas service between March 21, 2017, and May 19, 2017.

On February 19, 2018, Duke Kentucky filed its Motion and asserted that, because Ms. Rule's gas meter did not have remote capabilities and was located within the property, Duke Kentucky did not have access to the meter in order to obtain an actual usage reading. Duke Kentucky further stated that it included in Ms. Rule's bills between April 20, 2016, and March 21, 2017, a message that stated it was unable to access the meter for a reading, therefore usage on those bills was estimated, and it requested Ms. Rule to make arrangements for a meter reading. Duke Kentucky stated that, because Ms. Rule did not provide access, it continued to estimate readings until it obtained an actual reading on April 20, 2017.

According to Duke Kentucky's Motion, it billed Ms. Rule \$575.54 on or about March 24, 2017, based on estimated gas consumption, and billed Ms. Rule \$591.81 on or about April 21, 2017, based on actual gas consumption after an actual read of Ms. Rule's meter.

Duke Kentucky additionally stated in its Motion that, on or about May 30, 2017, it discovered that it had applied an incorrect Gas Cost Recovery ("GCR") rate in determining Ms. Rule's April 2017 gas charges. Duke Kentucky noted that this error did not affect the amount of gas consumption indicated on Ms. Rule's bills, only the rate to be applied to the consumption. Duke Kentucky stated that it sent Ms. Rule a corrected bill on or about June 7, 2017, in which it applied the correct GCR rate for April 2017 to Ms. Rule's

consumption. According to Duke Kentucky, it obtained actual readings of Ms. Rule's gas meter for the months of June, July, August, and September 2017.

On February 28, 2018, the Commission entered an Order directing Ms. Rule to respond to Duke Kentucky's Motion within 14 days. Ms. Rule failed to respond by the deadline established by the Commission in that Order.

The complainant has the burden of proof in this matter.<sup>2</sup> The Commission may dismiss a complaint when the complainant fails to produce evidence or carry the burden of proof.<sup>3</sup> Additionally, the Commission may dismiss a complaint when a complainant fails to prosecute the matter or comply with an Order of the Commission.<sup>4</sup> Duke Kentucky has provided a detailed explanation and response to the allegations in Ms. Rule's Complaint, indicating that it has not overcharged Ms. Rule for any utility services. Ms. Rule failed to respond to Duke Kentucky's Motion to dismiss the complaint, despite the Commission's February 28, 2018 Order to do so. Absent any evidence to the contrary, the Commission must rely on Duke Kentucky's statements and bills submitted by Ms. Rule in her Complaint. Based on a review of the bills and Duke Kentucky's Motion, it appears that Ms. Rule was not overcharged for gas service between March 21, 2017, and May 19, 2017. As a result, the Commission finds that Ms. Rule's Complaint should be

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<sup>2</sup> See, e.g., Case No. 2017-00273, *William C. Spainhoward vs Kenergy Corp.* (Ky. PSC Dec. 4, 2017), Order at 2; see also *Energy Regulatory Comm'n v. Kentucky Power Co.*, 605 S.W.2d 46, 50 (Ky. App. 1980) ("Applicants before an administrative agency have the burden of proof.") (citation omitted).

<sup>3</sup> Case No. 2015-00266, *Donald R. Fuller vs. Harrison County Sanitation District as Court-Appointed Receiver Operating Cedarbrook Treatment Plant* (Ky. PSC Sept. 24, 2015), Order at 2 (citing Case No. 94-010, *Carl Stinson v. Hardin County Water District # 2* (Ky. PSC May 5, 1994), Order at 1)).

<sup>4</sup> See, e.g., Case No. 2015-00260, *Johnny D. Pennington vs. Kentucky Power Company* (Ky. PSC Apr. 15, 2016), Order at 2; Case No. 2010-00406, *Wanda Sue Castle vs. Kentucky-American Water Co.* (Ky. PSC Mar. 15, 2011), Order at 1-2; Case No. 2010-00404, *Bulldog's Enterprises, Inc. d/b/a Bulldog's Roadhouse v. Duke Energy Kentucky, Inc.* (Ky. PSC Mar. 20, 2012), Order at 2.

dismissed because she failed to carry the burden of proof with respect to the allegations in her Complaint, failed to prosecute the matter, and failed to comply with the Commission's February 28, 2018 Order.

Therefore, the Commission finds that Ms. Rule's Complaint should be dismissed with prejudice. The Commission also finds that pursuant to KRS 278.260(2), a hearing is not necessary in this matter.

IT IS THEREFORE ORDERED that:

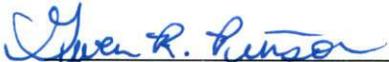
1. Duke Kentucky's Motion to dismiss the Complaint with prejudice is granted.
2. Ms. Rule's Complaint is dismissed with prejudice.
3. This case is closed as of the entry date of this order and removed from the Commission's docket.

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By the Commission

ENTERED  
APR 03 2018  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
Executive Director

Case No. 2017-00403

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